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Of Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**FRANK GUERRERO,**

Case No. 19-cv-1042

Plaintiff,

**COMPLAINT**

**UNLAWFUL EMPLOYMENT ACTION**

v.

**Title VII Discrimination and Retaliation**

**BEAVERTON AUTO BODY & PAINT,**

**LLC, an Oregon business corporation, and**

**CHRIS ANDERSON,**

**JURY TRIAL DEMANDED**

Defendant.

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action to remedy violations of his statutory rights under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2, as well as supplementary state claims. Plaintiff seeks equitable relief as well as compensatory damages, attorneys' fees and costs.

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## **JURISDICTION**

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, federal question jurisdiction, 28 U.S.C. § 1343, civil rights jurisdiction, and Title VII of the Civil Rights Act of 1964.

3. All preconditions to jurisdiction pursuant to 42 U.S.C. § 2000e-5 have been satisfied.

a. On May 30, 2018, Plaintiff filed charge of employment discrimination and retaliation with the Oregon Bureau of Labor and Industries (BOLI). BOLI assigned the charge case number EEEMRC180529-10784 for Oregon Unlawful Employment Practices.

b. On May 30, 2018, BOLI co-filed a charge with the Equal Employment Opportunity Commission (EEOC), charge number 38D-2018-00570, for violation of Title VII. .

c. On April 4, 2019, BOLI issued Plaintiff a right-to-sue letter for case number EEEMRC180529-10784.

d. On April 15, 2019, the EEOC issue a right-to-sue letter for charge number 38D-2018-00570.

e. This lawsuit was filed within 90 days of the issuance of said right-to-sue letters.

4. Venue is in the District of Oregon pursuant to 28 U.S.C. §1391(b) because the claim arose in this Judicial District.

### **PARTIES**

5. Plaintiff Frank Guerrero (“Guerrero”) is a citizen of the United States. At all times material, Guerrero worked for Defendant Beaverton Auto Body & Paint, LLC in Washington County, Oregon.

6. Defendant Beaverton Auto Body & Paint, LLC is an Oregon business corporation, registered to do business in Oregon. Beaverton Auto Body & Paint, LLC does regular and sustained business in Oregon, including Washington County, Oregon.

7. At all times relevant, Beaverton Auto Body & Paint, LLC’s employees and supervisors as their conduct is alleged herein were acting within the course and scope of their employment with Beaverton Auto Body & Paint, LLC.

8. Defendant Chris Anderson (“Anderson”), at all time material, is the Production Manager for Beaverton Auto Body & Paint, LLC and son of the owner, Kim Drake.

### **GENERAL FACTUAL ALLEGATIONS**

9. Guerrero is a Hispanic male. Guerrero was born in Austin, Texas but identifies himself as Mexican-American.

10. In June 2017, Guerrero began working for Beaverton Auto Body & Paint, LLC as an automotive painter.

11. In July and August 2017, Guerrero noticed that Anderson was giving more work to another painter, Shawn Meyers, a Caucasian. Guerrero brought this inequality to the attention of Anderson. Anderson said that he had given Mr. Meyers more work because of the “flow of the work.”

12. In September 2017, Anderson assigned Shawn Meyers to paint a car that was already assigned Guerrero. Meyers told Guerrero that Anderson gave him the job. Guerrero asked Anderson if that was true. Anderson lied said “no.”

13. Guerrero engaged in whistleblowing on multiple occasions. Guerrero notified Kim Drake that Beaverton Auto Body & Paint, LLC was engaging in illegal wage and hour practices. In October 2017, Kim Drake told Guerrero that Shawn Meyers went to Jeff Drake and Kim Drake and told them that Meyers and Guerrero were unhappy with the painters’ helpers’ wages being deducted from their paychecks. Guerrero told Kim Drake that he objected to the wages of the painter’s helpers wages being illegally taken from his paycheck. Kim Drake told Guerrero that is how they did things in the shop.

14. In November and December 2017, Guerrero reported further illegal activity to Jeff Drake. Guerrero reported to Jeff Drake that Shawn Meyers was stealing materials, such as clear coat to use on Drake’s own weekend side jobs

15. In January 2018, Anderson made offensive statements to Guerrero, such as “Oh, did you bring your tacos for lunch?” using an offensive Hispanic accent. Another employee, John Haille said to Guerrero, “You are a ghetto Mexican. I am tired of your ghetto ways.”

16. In the beginning of January 2018, Jeff Drake fired Shawn Meyers. At the end of January 2018, Beaverton Auto Body & Paint, LLC hired Robert Hamlette as a painter to replace Meyers.

17. Anderson was behaved in an offensive and abusive manner toward Guerrero. Anderson made jokes about Guerrero’s short stature saying, “You need a stool to get that man? You are the shortest guy here.”

18. On or around February 14 or 15, 2018, Guerrero received a \$ .50 per hour raise to compensate for the additional duty of doing ordering materials.

19. On February 19, 2018, Jeff and Kim Drake left for vacation in Hawaii leaving Anderson as the person in charge of the shop. Guerrero noticed he was not getting the amount of work he was usually getting. Guerrero received so little work that his two helpers were sent home. Guerrero noticed that Hamlette was being kept busy with assignments from Anderson. Guerrero asked Anderson why Guerrero wasn't getting any work. Anderson replied "The big fish go to the top and the little fish go to the bottom."

20. On Friday, March 2, 2018, Anderson said that there was a dent on the door of a vehicle assigned to Robert Hamlette and that it was not there before. Anderson asked Plaintiff to look at the door and implied that Guerrero had dented the door. Anderson said, "We are not going to put up with that shit. Those dents were not there." Anderson talked to coworker Gary Hoops about the dents who informed him that the dents were already in the door when the vehicle was received for painting.

21. On Monday, March 5, 2018, Plaintiff went to work. Guerrero saw that was a car in the paint booth he was assigned to with dent on top of the fender. Guerrero approached the body technician, John Haile, and asked him if he would look at the dent because it could easily be fixed. Mr. Haile was on his cell phone and said "In a minute." Guerrero waited about ten minutes and then came back and asked Mr. Haile again about the dent. Mr. Haile said "Fuck you, Mexican." Mr. Haile then challenged Guerrero to a fight, saying "We can take this to the parking lot if you want to."

22. Later, on Monday, March 5, 2018, Guerrero learned that a paint job that Anderson had promised to him had been given by Anderson to the other painter. When Guerrero asked

Anderson why he gave the job to the other painter, Anderson got in Guerrero's face and loudly said, "What's the problem man? You keep coming up to me." Anderson yelled and pointed at Guerrero saying "you are a bad apple." Kim Drake had just returned from her Hawaiian vacation. and was standing my while Anderson was yelling and verbally abusing Guerrero. Anderson then told Guerrero to leave the shop. Kim Drake then said, "You are not fired, Frankie." Guerrero told Kim Drake about the incident in which John Haile said "Fuck you Mexican" and challenged him to fight. Guerrero asked Kim drake if it was OK for Haile to talk to Guerrero like that. Drake said "No." drake then said "nobody gets fired for something somebody else said." Kim Drake said "Frankie, why don't you take the rest of the day off?" After Guerrero went home he received a text message from Kim Drake that his check was ready Guerrero drove back to Beaverton Auto Body. Kim Drake handed him his check she said "Anderson has already fired you."

**FIRST CLAIM FOR RELIEF**

**(Title VII Civil Rights Act of 1964, 42 U.S.C. §2000e-2)**

**(Defendant Beaverton Auto Body)**

**Count I – Race Discrimination**

23. Guerrero realleges all prior relevant paragraphs as if fully set forth herein.
24. At all material times, Beaverton Auto Body & Paint, LLC was an employer within the meaning of 42 U.S.C. § 2000e (b).
25. Beaverton Auto Body & Paint, LLC discriminated against Randall with respect to the terms and conditions of his employment because of Randall's race.
26. Beaverton Auto Body & Paint, LLC had no business necessity in firing Randall because of his race.

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27. Plaintiff is entitled to equitable relief and damages as set forth below.

**Count II – Race Retaliation**

28. Guerrero realleges all prior relevant paragraphs as if fully set forth herein.

29. At all material times, Beaverton Auto Body & Paint, LLC was an employer within the meaning of 42 U.S.C. § 2000e (b).

30. Beaverton Auto Body & Paint, LLC discriminated and retaliated against Guerrero with respect to the terms and conditions of his employment because Guerrero opposed discrimination based on his race.

31. Plaintiff is entitled to equitable relief and damages as set forth below.

**SECOND CLAIM FOR RELIEF**

**(Unlawful Employment Practice – ORS 659A.030(1)(b))**

**(Defendant Beaverton Auto Body)**

**Count I – Race Discrimination**

32. Randall realleges all prior relevant paragraphs as if fully set forth herein.

33. In violation of ORS 659A.030(1)(b), Beaverton Auto Body & Paint, LLC discriminated against Guerrero with respect to the terms and conditions of his employment because of Guerrero's race.

34. Plaintiff is entitled to equitable relief and damages as set forth below.

**Count II – Race Retaliation**

35. Guerrero realleges all prior relevant paragraphs as if fully set forth herein.

36. In violation of ORS 659A.030(1)(f), Beaverton Auto Body & Paint, LLC discriminated and retaliated against Guerrero with respect to the terms and conditions of his

employment because Guerrero opposed Beaverton Auto Body & Paint, LLC's race discrimination against Guerrero.

37. Plaintiff is entitled to equitable relief and damages as set forth below.

**THIRD CLAIM FOR RELIEF**

**(ORS Chapter 659A.199 – Whistleblower)**

**(Defendant Beaverton Auto Body)**

38. Plaintiff re-alleges all relevant paragraphs.

39. Plaintiff reported in good faith to Defendant Beaverton Auto Body information that he believed is evidence of a violation of a state or federal law, rule or regulation.

40. Defendant discriminated and retaliated against Plaintiff because of the reports made by Plaintiff. Defendant's actions violated ORS 659A.199, are an unlawful employment practice, and caused Plaintiff economic and noneconomic damages.

41. As a result of Defendant's conduct, Plaintiff suffered and continues to suffer non-economic and economic damages. Plaintiff is entitled to the relief, damages, attorney fees, costs, and interest as alleged below.

**FOURTH CLAIM FOR RELIEF**

**(ORS Chapter 659A.230 – Whistleblower)**

**(Defendant Beaverton Auto Body)**

42. Plaintiff re-alleges all relevant paragraphs.

43. Plaintiff reported criminal activity to Defendant.



44. Defendant discriminated and retaliated against Plaintiff because of the reports made by Plaintiff. Defendant's actions violated ORS 659A.230, are an unlawful employment practice, and caused Plaintiff economic and noneconomic damages.

45. As a result of Defendant's conduct, Plaintiff suffered and continues to suffer non-economic and economic damages. Plaintiff is entitled to the relief, damages, attorney fees, costs, and interest as alleged below.

#### **FIFTH CLAIM FOR RELIEF**

#### **(Aiding and Abetting Discrimination – ORS 659.030(1)(9)**

#### **(Chris Anderson)**

46. Plaintiff re-alleges all relevant paragraphs as if fully set forth herein.

47. Defendant Anderson aided, abetted, incited, compelled, and coerced the unlawful employment practices of Defendant Beaverton Auto Body, as alleged above, against Guerrero.

48. Anderson's actions violated ORS 659A.030(1)(g), are an unlawful employment practice, and caused Guerrero's economic and non-economic damages.

49. As a result, Guerrero suffered damages and is entitled to the damages and other relief set forth below.

#### **DAMAGES**

50. As a result of Defendant's unlawful employment actions, Guerrero suffered and continues to suffer humiliation, anxiety, distress, and impairment of his personal dignity and right to be free from discrimination or interference with his statutory rights. Guerrero suffered, and continues to suffer, economic damages, including, but not limited to, past and future wages, past and future benefits, and other expenses.

51. Guerrero is entitled to equitable relief, including, but not limited to, an award of back pay and lost benefits.

52. Guerrero should be awarded economic damages for past wages and benefits in an amount determined fair by a jury to compensate Guerrero for lost employment opportunities, including but not limited to, promotions and raises. Guerrero's economic damages are continuing in nature and are not presently known.

53. Guerrero is entitled to an award for future lost earnings, benefits, and lost earning capacity, and other compensatory damages for future pecuniary losses. Guerrero's economic damages are continuing in nature and are not presently known.

54. Guerrero is entitled to compensatory damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount to be proved at trial.

55. To the extent any amount awarded to Guerrero is for damages occurring prior to the entry of judgment, Guerrero is entitled to an award of pre-judgment interest at the legal rate from the date the damage occurred until the date of judgment.

56. Guerrero is entitled to post-judgment interest on all damages, costs and attorneys' fees from the date of judgment until the date paid.

57. Pursuant to 42 U.S.C. § 2000e-5, ORS 659A.885 and ORS 20.107, Guerrero is entitled to an award of attorneys' fees, expert witness fees, and costs incurred herein.

58. Guerrero also seeks an award for such additional relief as justice may require.

59. Plaintiff is entitled to post judgment interest on all damages, costs, expenses, and fees from the date of judgment until the date paid.

### **PRAYER FOR RELIEF**

Guerrero prays for the following judgment against Beaverton Auto Body & Paint, LLC:

1. A sum which will fully compensate Guerrero for his non-economic damages in a sum that is just as determined by a jury;
2. A sum which will fully compensate Guerrero for his economic damages in a sum that is just as determined by a jury;
3. Equitable relief, including, but not limited to, reinstatement if Guerrero so chooses;
4. Guerrero's costs and disbursements incurred herein;
5. Guerrero's attorneys' fees; and
6. For such other and further relief as the Court may deem just and equitable.

**Guerrero demands a trial by Jury.**

Dated: July 2, 2019

### **Law Offices of Daniel Snyder**

s/ Dan Snyder

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